IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8259 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GONDAL SHAHER SUDHARAI KAMDAR JUTH(INTUK)

Versus

GONDAL NAGARPALIKA

Appearance:

MS HANSA B PUNANI for Petitioner

MR PR NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/03/2000

ORAL JUDGEMENT

Learned advocate Mr. Karia is appearing for the petitioner. None present for the respondent Nagarpalika. Learned advocate Mr. P.R.Nanavaty who was appearing for the respondent Nagarpalika has retired.

2. In this petition, the petitioner union has challenged the impugned award passed by the Industrial Court, Rajkot in Reference ITR No. 464 of 1984 dated 17th August, 1989 under which the reference has been rejected by the tribunal. Brief facts of the present case are as under:

That one Haribhai Vashram Harkha has retired on 8.8.1982 from the post of driver and, therefore, one post of driver had fallen vacant and the union has raised demand that the said post should be filled up by promoting Shri Chana Soma, working as a cleaner. The second demand was to the effect that if said Chana Soma, Cleaner is promoted to the post of driver, then, the said vacant post of Cleaner should be filled up by another employee Chhaganbhai Oghad who was working as daily rated employee with effect from 9th August, 1982. The respondent Nagarpalika has submitted reply against the demand raised by the union inter alia pointing out that for the post of driver which has fallen vacant on account of retirement of Haribhai Vashram Harkha, two employees had approached the Civil Court,Gondal by filing the civil suit no. 88 of 1982 and 74 of 1982 and that cases were pending before the said civil court and unless and until the said cases are decided by the civil court, Chana Soma is not entitled to claim promotion on the said post. As regards the second demand, it was contended by the Nagarpalika that unless Chana Soma is promoted to the post of Driver, post of cleaner cannot be considered to have fallen vacant and, therefore, the second demand does not survive. The Tribunal, after examining the merits of the dispute raised before it and also after appreciating the evidence before it, came to the conclusion that because of the pendency of two civil suits as stated above, the matter has to be considered to be sub judiced. The tribunal also considered that there was no evidence led by the union to prove the demand and no witness has been examined in support of the dispute and, therefore, ultimately, the tribunal rejected the reference on 17th August, 1989.

Learned advocate Mr. Karia appearing for the petitioner has submitted that the Tribunal has committed gross error in not examining the industrial dispute which has been raised by the union on merits and that the tribunal has rejected the dispute without any application of mind.

I have gone through entire award passed by the tribunal. The Tribunal has given detailed reasons in

paragraph 6,9, 10 and 11 of the award for not allowing the reference. The tribunal was of the view that because of the pendency of two civil suits, the matter was sub judiced and, therefore, Chana Soma is not entitled to promotion on the post of driver and unless and until the Chana Soma is promoted to the post of driver, his post cannot be considered to have fallen vacant. In view of such reasoning, the tribunal rejected the reference. I am of the opinion that the tribunal is justified in coming to such conclusion. Learned advocate appearing for the petitioner union has not been able to point out any infirmity and/or jurisdictional error committed by the tribunal.

This Court, therefore, is not inclined to interfere with the said award in exercise of its powers under Article 226 and/or 227 of the Constitution of India. Accordingly, this petition is rejected. Rule is discharged. There shall be no order as to costs.

23.3.2000. (H.K.Rathod,J.)

Vyas